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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

No. ED CR 13-116-VAP

14 Plaintiff,

GOVERNMENT'S MOTION IN LIMINE NO.  
6: TO PRECLUDE DEFENDANT  
WEATHERSPOON'S EXPERT TESTIMONY OF  
NANCY KASER-BOYD, PHD

15 v.

16 KAWAUM MARQUEZ SCOTT,  
NEKEYIA NECOLE WEATHERSPOON,  
aka "Keey Bee,"

Hearing Date: May 19, 2014  
Hearing Time: 10:00 a.m.  
Location: Courtroom of the  
Hon. VIRGINIA A.  
PHILLIPS

17 Defendants.

21  
22 Plaintiff United States of America, by and through its counsel  
of record, the United States Attorney for the Central District of  
23 California and Assistant United States Attorneys Thomas D. Stout and  
Corey G. Lee, hereby moves in limine for an order precluding the  
testimony of Nancy Kaser-Boyd, Ph.D.

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This motion is based on the attached memorandum of points and authorities, all the files and records of this case, and such other oral and written argument that is permitted by the Court.

Dated: April 28, 2014

Respectfully submitted,

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United States Attorney

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Assistant United States Attorney  
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/s/  
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UNITED STATES OF AMERICA

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Between October 2012, and December 2012, defendants Kawaum Marquez Scott and Nekeyia Necole Weatherspoon ("defendant") recruited the then-14-year-old child victim in this case to work for them as a prostitute. They advertised her services through the internet, instructed her to perform numerous sexual acts with customers, and collected from the money customers paid her.

On April 24, 2014, defendant filed a notice of intent to call Nancy Kaser-Boyd, Ph.D. as an expert witness at trial to testify about Battered Woman Syndrome ("BWS") and its effect on defendant. (CR 58.)<sup>1</sup> The government seeks to exclude Dr. Kaser-Boyd's testimony as irrelevant and improper under the Federal Rules of Evidence.

## **II. STATEMENT OF FACTS**

A summary of defendants' alleged conduct is set forth in the government's motion in limine No. 1, and is hereby incorporated by reference. The government will only discuss additional facts specifically pertaining to this motion.

On April 24, 2014, defendant filed a notice of her intent to call Dr. Kaser-Boyd as an expert witness. (*Id.*) In the notice, defendant stated that Dr. Kaser-Boyd would testify about BWS and "her examination and conclusions concerning her examination of the defendant herein and whether or not defendant was suffering under the 'battered woman's syndrome' at the time of her commission of the offenses herein and to such other matters which relate thereto." (*Id.*) Dr. Kaser-Boyd's curriculum vitae outlining her expertise in

<sup>1</sup> "CR" refers to the Clerk's Record in the district court and is followed by the docket number.

1 BWS was attached to the notice. (Id.) Neither an examination report  
2 nor an indication that defendant was even examined was included,  
3 however.<sup>2</sup> (Id.)

4 **III. ARGUMENT**

5       **A. Expert Testimony About BWS in General is Improper and  
6                          Irrelevant.**

7       The Court should exclude the testimony of Dr. Kaser-Boyd because  
8 it is improper, and otherwise irrelevant. Defendant is charged with  
9 (1) one count of conspiring to engage in sex trafficking of a child,  
10 in violation of 18 U.S.C. § 1594(c); (2) two counts of sex  
11 trafficking of a child by force, fraud, or coercion, in violation of  
12 18 U.S.C. §§ 1591(a)(1), (a)(2), (b)(1), (b)(2); and (3) three counts  
13 of sex trafficking of a child, in violation of 18 U.S.C.  
14 §§ 1591(a)(1), (a)(2), (b)(2). Only evidence that is relevant to the  
15 elements of these offenses, or to a legal defense, therefore, is  
16 admissible at trial. See Fed. R. Evid. 402. See also United States  
17 v. Vallejo, 237 F.3d 1008, 1019 (9th Cir. 2001) ("expert testimony  
18 must be both relevant and reliable").

19       Without an examination of defendant and a report of such  
20 examination, Dr. Kaser-Boyd's testimony would consist of only the  
21 theory of BWS in general. Thus, defendant cannot establish that such  
22 testimony is relevant to any element or legal defense in this case.  
23 Accordingly, Dr. Kaser-Boyd's testimony, will not "assist the trier  
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25       <sup>2</sup> Pursuant to Fed. R. Crim. P. 16(b)(1)(C), on April 25, 2014,  
26 the government requested, but did not receive to date a written  
27 summary of Dr. Kaser-Boyd's testimony describing her opinions and the  
28 bases and reasons for those opinions. Defendant, however, has since  
then informed the government that she is awaiting the Court's order  
on her request for appointment of an expert.

1 of fact to understand the evidence or to determine a fact in issue,"  
2 Fed. R. Evid. 702, and must be excluded.

3       **B. A potential duress defense based on BWS should be excluded  
4                  as no prima facie showing of duress exists.**

5       BWS is arguably relevant to a legal defense of duress. If  
6 defendant seeks to raise duress as a defense based on BWS or  
7 otherwise, all such testimony, evidence, and mention relating to any  
8 purported duress, however, should be excluded, because defendant is  
9 not entitled to present a duress defense to the jury unless there is  
10 a prima facie showing of duress in a pre-trial offer of proof.

11       United States v. Vasquez-Landaver, 527 F.3d 798, 802 (9th Cir. 2008);  
12       see United States v. Moreno, 102 F.3d 994, 998 (9th Cir. 1996)  
13       ("Evidence of duress is not relevant if the defendant fails to  
14       present evidence of a prima facie case of the affirmative defense."  
15       (citing Fed. R. Evid. 402)). Thus far, defendant has failed to make  
16       a pre-trial prima facie showing of duress.

17       **C. Dr. Kaser-Boyd's Testimony Should Be Excluded As Unfairly  
18                  Misleading and Prejudicial**

19       Even if the Court were to conclude that the proffered testimony  
20       is proper and has some minimal relevance, any such de minimis  
21       probative value is substantially outweighed by the risk of unfair  
22       prejudice and confusion of the issues. Fed. R. Evid. 403. Prejudice  
23       is "unfair" when the evidence has "'an undue tendency to suggest  
24       decision on an improper basis,'" such as "'an emotional one.'" See,  
25       e.g., United States v. Gonzalez-Flores, 418 F.3d 1093, 1098 (9th Cir.  
26       2005) (quoting Old Chief v. United States, 519 U.S. 172, 180 (1997));  
27       United States v. McInnis, 976 F.2d 1226, 1231 (9th Cir. 1992)  
28       (quoting United States v. Skillman, 922 F.2d 1370, 1373 (9th Cir.

1 1990)). Simply presenting testimony about BSW without establishing  
2 evidence to the offense elements or to a legal defense would only  
3 serve to elicit decisions on an emotional basis.

D. Should the Court Allow Testimony About BWS in General, Any Statements of Prohibited Hearsay, Improper Vouching, and Improper Expert Statement of Mental State Should be Excluded

7 Should the Court allow Dr. Kaser-Boyd to testify about BWS in  
8 general, any testimony related to prohibited hearsay statements, that  
9 is, defendant's hearsay statements to Dr. Kaser-Boyd that are  
10 unrelated to medical diagnosis or treatment, should be excluded.

11     Guam v. Ignacio, 10 F.3d 608, 613 (9th Cir. 1992) (explaining, with  
12     emphasis, that "a child victim's statements about the identity of the  
13     perpetrator are admissible under the medical treatment exception when  
14     they are made for the purposes of medical diagnosis and treatment").  
15     Beyond the hearsay prohibition, these statements should be excluded  
16     if they constitute inappropriate voicing and an improper expert  
17     opinion on a mental state element. See United States v. Candoli, 870  
18     F.2d 496, 506 (9th Cir. 1989) ("An expert witness is not permitted to  
19     testify specifically to a witness' credibility or to testify in such  
20     a manner as to improperly buttress a witness' credibility." (emphasis  
21     added)); United States v. Morales, 108 F.3d 1031, 1041 (9th Cir.  
22     1997); Fed. R. Evid. 704(b).

23 | IV. CONCLUSION

24 For the foregoing reasons, the government moves for an order  
25 precluding the expert testimony of Dr. Kaser-Boyd.